



House of Representatives

File No. 797

General Assembly

January Session, 2007

(Reprint of File No. 583)

Substitute House Bill No. 7073
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 7, 2007

AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-498 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) Except as provided in subsection (c) of this section, every
4 advance fee paid or given, directly or indirectly, to a mortgage lender
5 or first mortgage broker required to be licensed pursuant to sections
6 36a-485 to 36a-498a, inclusive, shall be refundable.

7 (b) No originator required to be registered pursuant to sections 36a-
8 485 to 36a-498a, inclusive, shall accept payment of any advance fee
9 except an advance fee on behalf of a licensee. Nothing in this
10 subsection shall be construed as prohibiting the licensee from paying
11 an originator all or part of an advance fee, provided such advance fee
12 paid is not refundable under this section.

13 (c) Subsection (a) of this section shall not apply if: (1) The person

14 providing the advance fee and the mortgage lender or first mortgage
15 broker agree in writing that the advance fee shall not be refundable, in
16 whole or in part; and (2) the written agreement complies in all respects
17 with the provisions of subsection (d) of this section.

18 (d) An agreement under subsection (c) of this section shall meet all
19 of the following requirements to be valid and enforceable: (1) The
20 agreement shall be dated, signed by both parties, and be executed
21 prior to the payment of any advance fee; (2) the agreement shall
22 expressly state the total advance fee required to be paid and any
23 amount of the advance fee that shall not be refundable; (3) the
24 agreement shall clearly and conspicuously state any conditions under
25 which the advance fee will be retained by the licensee; (4) the term
26 "nonrefundable" shall be used to describe each advance fee or portion
27 thereof to which the term is applicable, and shall appear in boldface
28 type in the agreement each time it is used; and (5) the form of the
29 agreement shall (A) be separate from any other forms, contracts, or
30 applications utilized by the licensee, (B) contain a heading in a size
31 equal to at least ten-point boldface type that shall title the form
32 "AGREEMENT CONCERNING NONREFUNDABILITY OF
33 ADVANCE FEE", (C) provide for a duplicate copy which shall be
34 given to the person paying the advance fee at the time of payment of
35 the advance fee, and (D) include such other specifications as the
36 commissioner may by regulation prescribe.

37 (e) An agreement under subsection (c) of this section that does not
38 meet the requirements of subsection (d) of this section shall be
39 voidable at the election of the person paying the advance fee.

40 (f) (1) No mortgage lender or first mortgage broker required to be
41 licensed pursuant to sections 36a-485 to 36a-498a, inclusive, shall enter
42 into an agreement with or otherwise require any person to pay the
43 mortgage lender or first mortgage broker for any fee, commission or
44 other valuable consideration lost as a result of such person failing to
45 consummate a first mortgage loan, provided the mortgage lender or
46 first mortgage broker may collect such fee, commission or

47 consideration as an advance fee subject to the requirements of this
48 section.

49 (2) No first mortgage broker required to be licensed pursuant to
50 sections 36a-485 to 36a-498a, inclusive, shall enter into an agreement
51 with or otherwise require any person to pay the first mortgage broker
52 any fee, commission or other valuable consideration for the
53 prepayment of the principal of a first mortgage loan by such person
54 before the date on which the principal is due.

55 (g) (1) For the purposes of this subsection:

56 (A) "Unfair or deceptive act or practice" means (i) the failure to
57 clearly and conspicuously state in the initial phase of the solicitation
58 that the solicitor is not affiliated with the lender or broker with which
59 the consumer initially applied, (ii) the failure to clearly and
60 conspicuously state in the initial phase of the solicitation that the
61 solicitation is based on personal information about the consumer that
62 was purchased, directly or indirectly, from a consumer reporting
63 agency without the knowledge or permission of the lender or broker
64 with which the consumer initially applied, (iii) the failure in the initial
65 solicitation to comply with the provisions of the federal Fair Credit
66 Reporting Act relating to prescreening solicitations that use consumer
67 reports, including the requirement to make a firm offer of credit to the
68 consumer, or (iv) knowingly or negligently using information from a
69 mortgage trigger lead (I) to solicit consumers who have opted out of
70 prescreened offers of credit under the federal Fair Credit Reporting
71 Act, or (II) to place telephone calls to consumers who have placed their
72 contact information on a federal or state Do Not Call list; and

73 (B) "Mortgage trigger lead" means a consumer report obtained
74 pursuant to Section 604 (c)(1)(B) of the federal Fair Credit Reporting
75 Act, 15 USC 1681b, where the issuance of the report is triggered by an
76 inquiry made with a consumer reporting agency in response to an
77 application for credit. "Mortgage trigger lead" does not include a
78 consumer report obtained by a lender that holds or services existing

79 indebtedness of the applicant who is the subject of the report.

80 (2) No mortgage lender or first mortgage broker shall engage in an
81 unfair or deceptive act or practice in soliciting an application for a first
82 mortgage loan when such solicitation is based, in whole or in part, on
83 information contained in a mortgage trigger lead. Any violation of this
84 subsection shall be deemed an unfair or deceptive trade practice under
85 subsection (a) of section 42-110b.

86 Sec. 2. Section 36a-521 of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2007*):

88 (a) No person engaged in the secondary mortgage loan business in
89 this state as a mortgage lender, or a secondary mortgage broker,
90 including any licensee under sections 36a-510 to 36a-524, inclusive, and
91 any person who is exempt from licensing under section 36a-512, may
92 (1) charge, impose or cause to be paid, directly or indirectly, in
93 connection with any secondary mortgage loan transaction, prepaid
94 finance charges that exceed in the aggregate eight per cent of the
95 principal amount of the loan, or (2) include in the loan agreement
96 under which prepaid finance charges have been assessed any
97 provision which permits the mortgage lender to demand payment of
98 the entire loan balance prior to the scheduled maturity, except that
99 such loan agreement may contain a provision which permits the
100 mortgage lender to demand payment of the entire loan balance if any
101 scheduled installment is in default for more than sixty days or if any
102 condition of default set forth in the mortgage note exists. For the
103 purposes of this section, "prepaid finance charge" has the meaning
104 given to that term in section 36a-746a.

105 (b) Any mortgage lender who fails to comply with the provisions of
106 this section shall be liable to the borrower in an amount equal to the
107 sum of: (1) The amount by which the total of all prepaid finance
108 charges exceeds eight per cent of the principal amount of the loan; (2)
109 eight per cent of the principal amount of the loan or two thousand five
110 hundred dollars, whichever is less; and (3) the costs incurred by the

111 borrower in bringing an action under this section, including reasonable
112 attorney's fees, as determined by the court, provided no such mortgage
113 lender shall be liable for more than the amount specified in this
114 subsection in a secondary mortgage loan transaction involving more
115 than one borrower.

116 (c) Except as provided in subsection (e) of this section, every
117 advance fee paid or given, directly or indirectly, to a mortgage lender
118 or secondary mortgage broker required to be licensed pursuant to
119 sections 36a-510 to 36a-524, inclusive, shall be refundable.

120 (d) No originator required to be registered pursuant to sections 36a-
121 510 to 36a-524, inclusive, shall accept payment of any advance fee
122 except an advance fee on behalf of a licensee. Nothing in this
123 subsection shall be construed as prohibiting the licensee from paying
124 an originator all or part of an advance fee, provided such advance fee
125 paid is not refundable under this section.

126 (e) Subsection (c) of this section shall not apply if: (1) The person
127 providing the advance fee and the licensee agree, in writing, that the
128 advance fee shall not be refundable, in whole or in part; and (2) the
129 written agreement complies in all respects with the provisions of
130 subsection (f) of this section.

131 (f) An agreement under subsection (e) of this section shall meet all
132 of the following requirements to be valid and enforceable: (1) The
133 agreement shall be dated, signed by both parties, and be executed
134 prior to the payment of any advance fee; (2) the agreement shall
135 expressly state the total advance fee required to be paid and any
136 amount of the advance fee that shall not be refundable; (3) the
137 agreement shall clearly and conspicuously state any conditions under
138 which the advance fee will be retained by the licensee; (4) the term
139 "nonrefundable" shall be used to describe each advance fee or portion
140 thereof to which the term is applicable and shall appear in boldface
141 type in the agreement each time it is used; and (5) the form of the
142 agreement shall (A) be separate from any other forms, contracts or

143 applications utilized by the licensee, (B) contain a heading printed in a
144 size equal to at least ten-point boldface type that shall title the form
145 "AGREEMENT CONCERNING NONREFUNDABILITY OF
146 ADVANCE FEE", (C) provide for a duplicate copy, which shall be
147 given to the person paying the advance fee at the time of payment of
148 the advance fee, and (D) include such other specifications as the
149 commissioner may by regulation prescribe.

150 (g) An agreement under subsection (e) of this section that does not
151 meet the requirements of subsection (f) of this section shall be voidable
152 at the election of the person paying the advance fee.

153 (h) (1) No mortgage lender or secondary mortgage broker required
154 to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, shall
155 enter into an agreement with or otherwise require any person to pay
156 the mortgage lender or secondary mortgage broker for any fee,
157 commission or other valuable consideration lost as a result of such
158 person failing to consummate a secondary mortgage loan, provided
159 the mortgage lender or secondary mortgage broker may collect such
160 fee, commission or consideration as an advance fee subject to the
161 requirements of this section.

162 (2) No secondary mortgage broker required to be licensed pursuant
163 to sections 36a-510 to 36a-524, inclusive, shall enter into an agreement
164 with or otherwise require any person to pay the secondary mortgage
165 broker any fee, commission or other valuable consideration for the
166 prepayment of the principal of a secondary mortgage loan by such
167 person before the date on which the principal is due.

168 (i) (1) For the purposes of this subsection:

169 (A) "Unfair or deceptive act or practice" means (i) the failure to
170 clearly and conspicuously state in the initial phase of the solicitation
171 that the solicitor is not affiliated with the lender or broker with which
172 the consumer initially applied, (ii) the failure to clearly and
173 conspicuously state in the initial phase of the solicitation that the
174 solicitation is based on personal information about the consumer that

175 was purchased, directly or indirectly, from a consumer reporting
176 agency without the knowledge or permission of the lender or broker
177 with which the consumer initially applied, (iii) the failure in the initial
178 solicitation to comply with the provisions of the federal Fair Credit
179 Reporting Act relating to prescreening solicitations that use consumer
180 reports, including the requirement to make a firm offer of credit to the
181 consumer, or (iv) knowingly or negligently using information from a
182 mortgage trigger lead (I) to solicit consumers who have opted out of
183 prescreened offers of credit under the federal Fair Credit Reporting
184 Act, or (II) to place telephone calls to consumers who have placed their
185 contact information on a federal or state Do Not Call list; and

186 (B) "Mortgage trigger lead" means a consumer report obtained
187 pursuant to Section 604(c)(1)(B) of the federal Fair Credit Reporting
188 Act, 15 USC 1681b, where the issuance of the report is triggered by an
189 inquiry made with a consumer reporting agency in response to an
190 application for credit. "Mortgage trigger lead" does not include a
191 consumer report obtained by a lender that holds or services existing
192 indebtedness of the applicant who is the subject of the report.

193 (2) No mortgage lender or secondary mortgage broker shall engage
194 in any unfair or deceptive act or practice in soliciting an application for
195 a secondary mortgage loan when such solicitation is based, in whole or
196 in part, on information contained in a mortgage trigger lead. Any
197 violation of this subsection shall be deemed an unfair or deceptive
198 trade practice under subsection (a) of section 42-110b.

199 *Sec. 3. (Effective July 1, 2007)* (a) There is established a task force to
200 study the development of a mandatory mortgage loan originator
201 education program for individuals who originate mortgage loans,
202 including licensees and originators. The task force shall consist of: The
203 Banking Commissioner, or the commissioner's designee, and a
204 representative of the Connecticut Society of Mortgage Brokers, a
205 representative of the Connecticut Mortgage Bankers Association, a
206 representative of the Connecticut Mortgage Brokers Association and a
207 representative of the Connecticut Bankers Association, each appointed

208 by the speaker of the House of Representatives.

209 (b) The task force shall consider: (1) Individuals who will be
210 required to participate in such program; (2) the curriculum for such
211 program; (3) the certification requirements for persons who may offer
212 the curriculum; (4) enforcement remedies for licensees that employ or
213 retain originators who have not completed such program; (5) sources
214 of funding for such program; (6) time frames and guidelines for
215 monitoring the development and implementation of such program;
216 and (7) recommendations with respect to any legislative or regulatory
217 amendments necessary to implement such program.

218 (c) Not later than February 1, 2008, and annually thereafter until,
219 and including, February 1, 2010, the task force shall submit its findings
220 and recommendations to the joint standing committee of the General
221 Assembly having cognizance of matters relating to banks, in
222 accordance with section 11-4a of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	36a-498
Sec. 2	<i>October 1, 2007</i>	36a-521
Sec. 3	<i>July 1, 2007</i>	New section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Banking Dept.	BF - Revenue Gain	Potential Minimal	Potential Minimal

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill prohibits use of consumer credit information by first mortgage brokers or mortgage lenders. A potential minimal revenue gain could be experienced, since violations of this bill would be an unfair trade practice. In FY 06, \$81,600 was collected in fines and penalties for all types of mortgage loan related violations.

House "A" made technical and minor changes which have no fiscal impact.

House "B" removes a representative of the banking industry from the task force and replaces that member with a representative of the Connecticut Bankers Association. There is no fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

OLR Bill Analysis**sHB 7073 (as amended by House "A" and "B")******AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS.*****SUMMARY:**

This bill prohibits lenders and brokers of first and second mortgages from engaging in any unfair or deceptive act or practice, as defined in the bill, when soliciting a mortgage secured by residential property in Connecticut if the solicitation is based in any way on a mortgage trigger lead. It makes a violation of its provisions an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (CUTPA).

The bill also establishes a task force to study the development of a mandatory mortgage loan originator education program. The bill requires the task force to submit its findings and recommendations to the Banks Committee annually for three years, beginning February 1, 2008.

*House Amendment "A" revises the definition of "unfair or deceptive trade practice" under the bill.

*House Amendment "B" adds the task force language.

EFFECTIVE DATE: October 1, 2007

MORTGAGE TRIGGER LEADS***Definition***

The bill defines a "mortgage trigger lead" as a consumer report that is (1) obtained in accordance with the provisions of the federal Fair Credit Reporting Act (FCRA) governing the issuance of consumer

reports when the transaction is not initiated by the consumer and (2) issued as a result of an inquiry to a consumer reporting agency (CRA) in connection with a consumer's credit application. The bill excludes from the definition a consumer report obtained by a lender that holds or services the applicant's existing debt.

Unfair or Deceptive Acts or Practices

The bill defines "unfair or deceptive act or practice" as

1. failing to clearly and conspicuously state in the initial phase of the solicitation that (a) the solicitor is not affiliated with the lender or broker with which the consumer initially applied and (b) the solicitation is based on information about the consumer purchased from a CRA without the initial lender's or broker's permission or knowledge;
2. failing to comply with FCRA's provisions on pre-screened offers of credit; or
3. knowingly or negligently using information from a mortgage trigger lead to solicit consumers who have, in accordance with FCRA, opted-out of receiving pre-screened offers of credit or who are on the federal or state "Do Not Call" list.

MORTGAGE LOAN ORIGINATOR EDUCATION PROGRAM TASK FORCE

The bill establishes a task force to study the development of a mandatory mortgage loan originator education program for people who originate mortgage loans. The task force must consist of the banking commissioner and one House Speaker-appointed representative each of the Connecticut Society of Mortgage Brokers, Mortgage Bankers Association, Mortgage Brokers Association, and Bankers Association.

The task force must consider the program's participants, curriculum, and funding. It also must consider:

1. the certification requirements for persons who offer the curriculum;
2. enforcement remedies for licensees that employ or retain originators who have not completed the program;
3. time frames and guidelines for monitoring the program's development and implementation; and
4. recommendations on legislative or regulatory amendments needed to implement it.

BACKGROUND

CUTPA

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Fair Credit Reporting Act (FCRA)

FCRA promotes the accuracy, fairness, and privacy of information in the files of CRAs. It allows CRAs to issue "consumer reports" in a number of circumstances, but contains special provisions for situations where the consumer does not initiate the transaction (i.e., for unsolicited pre-screened offers). Among other things, FCRA prohibits an agency from furnishing a consumer report in connection with any credit or insurance transaction not initiated by the consumer unless:

1. the consumer authorizes it or

2. the transaction consists of a “firm offer” of credit or insurance, the CRA gives consumers an opportunity to be excluded from such pre-screened lists that the agency provides without the consumer’s consent, and the consumer has not exercised his right to be excluded.

The law also places disclosure duties on people who use the reports to solicit consumers. They must accompany each written solicitation with a clear and conspicuous statement that:

1. information in the consumer’s credit report was used;
2. the consumer received the offer of credit or insurance because he satisfied the criteria for creditworthiness or insurability under which he was selected;
3. if applicable, the credit or insurance offer may be denied if, after the consumer responds, he does not meet the selection or other applicable criteria or does not furnish any required collateral; and
4. the consumer has a right to prohibit information in his file at the agency from being used in any transaction not initiated by him and can exercise this right by writing to a specific address or calling a toll-free number.

The law does not address how the disclosures should be made for telephone solicitations.

Legislative History

The House referred the bill (File 90) to the Judiciary Committee, which favorably reported a substitute tying the bill to CUTPA.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/06/2007)

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/10/2007)